

In the present case, therefore, as it appears to me, the principle of relation is inapplicable, because the resurvey under the escheat warrant, *in express terms*, excludes the land in question. The escheator, therefore, knew he was not getting it, and did not pay for it, and there can be no principle of equity which will give it to him.

But it is said that conceding the land did not pass to the grantee under the escheat patent, still it was not liable to be taken up under common warrants, and therefore the caveats must be ruled good.

The principle that lands which have escheated to the state cannot properly be taken up as vacant, seems to be quite clear, but so long as the State alone is interested, I do not very well see why she may not herself agree to waive the right which the reversion of the land to her by the failure of heirs on the part of the owner may have conferred upon her. If, to be sure, any fraud or imposition has been practiced upon the State, as in the case of *Lord Proprietary vs. Jennings et al*, 1 H. & McH., 92, the party perpetrating the fraud or those claiming under him could not be permitted to reap the fruits of it, but if the transaction was fair and the result of mistake all round, it would not be difficult to conceive of cases in which the principles of justice would be violated in taking from a party, lands acquired under a common warrant which had escheated. One of the cases now before the court may be taken as an illustration. Upon the land covered by the certificate of "*Badley's Beginning*," it is admitted that at the time of the survey thereof, and the return of the certificate, there were no improvements of any description, and that it is situated on the flats of Nanticoke river, between high and low water marks on said river. It had become escheat in 1762, and was expressly thrown out of the resurvey under the escheat warrant in 1763. That it was honestly supposed to be vacant land by Elijah Badley, when he made his survey in 1831, there is not the least reason to doubt, and, indeed, as there were no improvements upon it, and consequently none to pay for, there was no motive for not taking out